

Contribution to the public consultation on Rights Based Management

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An extensive study on property rights in fisheries has been carried out in 1997 (see W.P. Davidse et al, *Property rights in fishing – Effects on the industry and effectiveness for fishery management policy*, November 1997, LEI, The Hague). This study formulates a number of important principles and compares systems in several EU MS. Many of the findings are still valid today. In particular, two points are of importance:

- Property rights in fisheries are in principle intangibles, which should be interpreted as **'entitlements to stream of benefits'**, rather than tangible property rights.
- Property rights bear 6 **characteristics**: Exclusivity, quality of title, transferability, divisibility, duration and flexibility. These characteristics determine how the rights can function.

Property rights should not be only interpreted in terms of **rights** but also in terms of **responsibilities** for all involved parties, i.e. those who issue them as well as the subsequent owners.

Definition of property titles are an **exclusive domain of the MS**, independently of their nature. Therefore PR in fishing must fit in the national legal systems and follow examples of other natural resources (land, oil, etc.). Considering the relatively small economic size of the potential PR in fishing, setting up a new scheme may lead to legal confusion.

As fish stocks are not linked to specific areas within national boundaries, the principle of **relative stability** (or similar system) will have to be maintained to divide the benefits of the fish resources among the MS. This is a prerequisite for a legally sound system of RBM.

PR can be **defined** in many different ways (share in stocks or effort, licenses in terms of kW or GT, access tickets, etc.). However, independently of the definition, they offer access to means of production or stream of benefits. Consequently they are comparable, even if not identical.

In the present situation, fishing companies owned by citizens of a certain MS can be positively discriminated against non-nationals in relation to the access to the fish resources allocated to a specific MS. The **principle of economic link** has been established and accepted. In view of the existing jurisdiction in this respect, it will be necessary to design new interpretation of the principle of economic link, which will have to be accepted politically. However, such new interpretation is readily available when looking at exploitation rights of other natural resources, like oil. In such cases national states receive benefits from their natural resources by collecting royalties from companies which receive exploitation rights. A comparable system can be introduced in fisheries as well. (In some non-EU countries this is an accepted approach.) Application of exploitation rights and royalties can produce a transparent and non-discriminatory system, which would be fully in line with the principles of the common market.

Property rights (or rather rights to exploitation and stream of benefits) **are means to allocate /** distribute the existing production opportunities. They are also means to impose responsibilities related to those rights. However, **PRs are NOT management measures**. Management measures (e.g. TACs or effort allocations) remain relevant. PR offer new options for effective implementation of management measures.

In many MS allocation of PRs has already taken place in many different forms. If necessary at all, further development of the PR-system should be a logical continuation of the historical development which has taken place. A concise **overview of the existing systems** may provide insights how they could be homogenized and integrated at EU level. Such integration will certainly be beneficial for further improvement of the efficiency of the sector. Such overview will also show in which fisheries a **first allocation** still needs to be implemented and could provide proposals how this could be done.

Concentration of property rights has been taking place autonomously over the 20-30 years. The number of fishermen, vessels and fishing firms has structurally decreased. While there were some 300.000 fishermen in EU-12 around 1990, by 2005 it is probably not more than 160,000¹. This trend is likely to continue with or without introduction of RBM. Concentration is characteristic of the present general economic developments and it is inconceivable that a small sector like the fisheries could be protected from such trend by policy measures. In fact the most effective protection seems to be to provide dynamic fishing companies the opportunities to develop further.

PRs are owned by legal persons (companies, associations, individuals, etc.). The cause of concentration is not only the buying power of some players, but equally the willingness to sell by the others. This process has also **positive aspects**, as it maintains economic and social dynamics and creates new opportunities for everyone. Those who buy PRs can subsequently run their business more efficiently and profitably. Those who sell capitalize on their historical business record and obtain means (capital) to enter into **new economic activities**, potentially strengthening and diversifying the local economy. This is the fundament of economic development, leading to more efficient use of scarce resources. In other sector and in the society at large this development has brought an increasing economic prosperity and resilience. There is no research which would demonstrate that in case of fisheries and coastal communities this process will by definition generate only negative effects. Although transitional problems may occur, structural avoidance of economic dynamics will almost certainly create substantially more serious problems in medium and long run.

Role of primary industries (agriculture, fisheries, etc.) has been structurally decreasing for well over half a century. Local and regional economies are increasingly integrated into larger systems. Also this trend decreases the **role of the catching sector**. Only 5 NUTS-2 regions² showed in 2002-2003 an employment dependency of more than 2% on the catching sector and in another 4 regions³ the employment dependency was 1-2%. In terms of income the regional dependency is even lower, as average income per person in the catching sector is usually below the regional average.

Institutionalization of PRs may offer new opportunities to **coastal communities** committed to maintain their fishing activities. They may be able to invest in sufficient PRs to create a sufficiently large and dynamic basis. Evidently, a political choice to protect coastal communities from the market forces by specific policy measures is justified, but the justification and consequences of such choice should be made transparently clear.

The need for increasing efficiency and productivity in the catching sector is also illustrated by the structural **lack of crews** which the sector has been facing for many years. There are persistent indications that an increasing number of vessels owners turns to hiring foreign crews to man their vessels. National / local crew are apparently difficult to find for reasons of relatively low earnings and possibly social conditions and consequences of work on board. Labour productivity is apparently too

¹ See Regional economic studies. These numbers are a mixture of full time and part time employment.

² Voreio Aigaio, Notio Aigaio and Ionia Nisia in Greece, Ceuta (Spain) and Acores (Portugal).

³ Sterea Ellada and Peloponisos (Greece), Galicia (Spain) and Algarve (Portugal). See P. Salz et al. *Employment in the fisheries sector, Current situation*, Report for the European Commission, April 2006

low to guarantee sufficient incomes. It must be noted that crew scarcity existed already well before the sharp increase in fuel prices, which has undoubtedly further aggravated the crewing problem. Hiring foreign crews, on the other hand, weakens the employment and income effects for the local or regional economy. These trends can be slowed down and possibly reverted if RBM is introduced which would strengthen the performance of the catching sector.

The CFP has pursued structural reduction of the fishing fleets. Introduction of tradable property rights, if initially allocated free of charge, **increases the capital value** of fishing companies. When taking the decision to stop or to continue, the owner may have an opportunity to sell these assets, which he received free of charge, and recover substantially more capital than he would if selling (or decommissioning) his vessel only. However, it must be also pointed out that intangible assets (PRs) also serve as an additional security for the banks, which may provide more credit and maintain companies longer in operation.

The **challenge** of setting up an operational RBM system is to meet the six requirements specified above, which would create a proper balance between rights and responsibilities of the owners (Member States) and the users (fishing sector). The existing communication technology and present regulations regarding control of landings and effort should allow a situation where vessels flying the flag of one MS can exploit parts of TACs allocated to another MS. This seems a fundamental prerequisite for efficient fishing sector in the long run.